



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Director-General

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***By registered letter with  
acknowledgment of receipt***

Mr Vincent Harmsen  
c/o Simon de Bergeyck  
Rue au Bois 216

1150 Brussels

***Advance copy by email :***  
ask+request-3678-  
e56de39a@asktheeu.org

Dear Mr Harmsen,

**Subject: Your application for access to documents – Ref GestDem No 2017/190**

We refer to your e-mail dated 22 January 2016 in which you make a request for access to documents, registered on 23 January 2016 under the above mentioned reference number.

### **Scope of the request**

You request access to the following documents dating between November 9<sup>th</sup> 2016 and December 22<sup>nd</sup> 2016. :

- all internal documents, correspondence (including emails), agendas, phone logs, minutes of meetings or any other reports of such meetings where the implications of the election of Donald Trump as US president and the effects for the TTIP negotiations were discussed by officials of the European Commission (all DGs including the Secretariat-General and services such as the EEAS) between November 9<sup>th</sup> 2016 and December 22<sup>nd</sup> 2016.

We have identified two documents that fall within the scope of your request:

- An internal report dated 22 November 2016 – **document 1**
- An internal Weekly Newsflash dated 25 November 2016 – **document 2**

Document 2 is being disclosed. Please be aware that we have deleted those parts of the Weekly Newsflash which are not covered by your request. You will find the document Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11. Office: BREY 14/110.

attached to this reply. You may reuse the document free of charge for non-commercial and commercial purposes provided that the source is acknowledged, and that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse<sup>1</sup>.

Following an examination of the document 1 requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that access to the document cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4.1(a) third indent and in Article 4.3 first subparagraph of this Regulation.

### **Protection of international relations**

Article 4.1(a) third indent, of Regulation 1049/2001 provides that "*[the institutions shall refuse access to a document where disclosure would undermine the protection of: the public interest as regards: [...]international relations.*"

The Court of Justice has acknowledged that the institutions enjoy "*a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4.1(a)] could undermine the public interest*<sup>2</sup>". More specifically, the General Court has stated that "*it is possible that the disclosure of European Union positions in international negotiations could damage the protection of the public interest as regards international relations*" and "*have a negative effect on the negotiating position of the European Union*<sup>3</sup>. It added that "*in the context of international negotiations, unilateral disclosure by one negotiating party of the negotiating position of one or more other parties [...] may be likely to seriously undermine, for the negotiating party whose position is made public and, moreover, for the other negotiating parties who are witnesses to that disclosure, the mutual trust essential to the effectiveness of those o negotiations.*<sup>4</sup>"

Document 1 contains an internal Commission report of meetings between Commission officials and US officials as part of the TTIP negotiations which are currently underway. A public release of such internal exchanges would undermine the economic and international relations of the EU by revealing internal tactical and strategic considerations. That could damage the protection of the public interest as regards "international relations" and have a negative effect on the negotiating position of the European Union.

### **Protection of the institution's decision-making process**

Article 4.3 first subparagraph, of Regulation 1049/2001 provides that "*access to a document, drawn up by an institution for internal use or received by an institution, which*

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<sup>1</sup> See the Decision of the Commission of 12 December 2011 (2011/833/EU), OJ L 330/39 of 14 December 2011 for details; this Decision does not apply to documents for which third parties hold the copyrights, Article 2 (2) (b).

<sup>2</sup> Judgment in *Council v Sophie in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 63.

<sup>3</sup> Judgment in *Sophie in't Veld v Commission*, T-301/10, EU:T:2013:135, paragraphs 123-125.

<sup>4</sup> *Id.*, paragraph 126.

*relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.*

The jurisprudence of the EU Courts has recognized that *"the protection of the decision-making process from targeted external pressure may constitute a legitimate ground for restricting access to documents relating to the decision-making process"*<sup>5</sup> and that the capacity of its staff to express their opinions freely must be preserved<sup>6</sup> so as to avoid the risk that the disclosure would lead to future self-censorship. As the General Court has recognized, the result of such self-censorship *"would be that the Commission could no longer benefit from the frankly-expressed and complete views required of its agents and officials and would be deprived of a constructive form of internal criticism, given free of all external constraints and pressures and designed to facilitate the taking of decisions [...]"*<sup>7</sup>.

Document 1 contains an internal Commission report of meetings between Commission officials and US officials as part of the TTIP negotiations. Document 1 was meant for internal use as a basis to inform the internal reflection and prepare input for the decision-making process regarding the TTIP negotiations which are currently underway. A public release of such internal exchanges would seriously undermine the institution's decision-making process by revealing internal tactical and strategic considerations.

### **Overriding public interest**

The exception laid down in Article 4.3 of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. Such an interest must, first, be public and, secondly, outweigh the harm caused by disclosure. The negotiations of international agreements as such *"fall within the domain of the executive"*, which entails that *"public participation in the procedure relating to the negotiation and the conclusion of an international agreement is necessarily restricted, in view of the legitimate interest in not revealing strategic elements of the negotiations"*<sup>8</sup>. Document 1 pertains to the executive functions of the EU, as it concerns internal exchanges part of international negotiations. Accordingly, we have also considered whether the risks attached to the release of document 1 are outweighed by the public interest in accessing the requested document. We have not been able to identify any such public interest capable of overriding the need to preserve the Commission's decision-making process.

### **Partial access**

Pursuant to Article 4.6 of Regulation (EC) No 1049/2001 *"[i]f only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released"*. We have also considered, pursuant to Article 4(6) of Regulation 1049/2001, whether *partial access can be granted to the document 1*.

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<sup>5</sup> Judgment in *MasterCard and Others v Commission*, T-516/11, EU:T:2014:759, paragraph 71

<sup>6</sup> Judgment in *Muñiz v Commission*, T-144/05, EU:T:2008:596, paragraph 89.

<sup>7</sup> Judgment in *MyTravel v Commission*, T-403/05, EU:T:2008:316, paragraph 52.

<sup>8</sup> Judgment in *Sophie in't Veld v European Commission*, T-301/10, EU:T:2013:135, paragraphs 120 and 181; see also judgment in *Sophie in 't Veld v Council*, T-529/09, EU:T:2012:215, paragraph 88.

*However, we have concluded that document 1 is entirely covered by the exceptions set out in Articles 4.1(a) third indent and 4.3 first subparagraph and that it is impossible to disclose any parts of the document without undermining the protection the interests protected by these provisions, as explained above.*

#### **Means of redress**

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Any confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission  
Secretary-General  
Transparency unit SG-B-4  
BERL 5/282  
B-1049 Bruxelles  
or by email to: [sg-acc-doc@ec.europ](mailto:sg-acc-doc@ec.europ)

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lowri Evans', with a stylized, cursive script.

Lowri Evans